

AMENDED IN ASSEMBLY JUNE 17, 2013

AMENDED IN SENATE MAY 20, 2013

AMENDED IN SENATE APRIL 10, 2013

**SENATE BILL**

**No. 360**

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**Introduced by Senator Padilla**

February 20, 2013

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An act to amend Section 19100 of, to amend the heading of Article 1 (commencing with Section 19200) of Chapter 3 of Division 19 of, to amend the headings of Chapter 3 (commencing with Section 19200) and Chapter 3.5 (commencing with Section 19260) of Division 19 of, to amend the heading of Division 19 (commencing with Section 19001) of, to amend and renumber Sections 19103, 19200.5, 19202, 19203, 19204, 19207, 19209, 19210, 19211, 19212, 19212.5, 19213, 19214, 19214.5, 19215, 19216, 19217, 19220, 19221, 19222, 19223, 19225, 19226, 19227, 19227.5, 19228, 19229, 19229.5, 19230, 19231, 19232, 19233, 19234, 19234.5, 19235, 19236, 19237, 19238, 19239, 19240, 19241, 19242, 19243, 19244, 19245, 19250, 19251, 19252, 19253, 19254, 19255, 19260, 19261, 19262, 19263, 19264, 19267, 19269, 19270, 19271, 19272, 19273, 19274, and 19275 of, to amend and renumber the headings of Article 2 (commencing with Section 19220), Article 2.5 (commencing with Section 19225), Article 3 (commencing with Section 19230), and Article 4 (commencing with Section 19250) of Chapter 3 of Division 19 of, to amend, renumber, and add Sections 19101, 19102, and 19201 of, to add Sections 19006, 19282, 19283, and 19286 to, to add Article 2 (commencing with Section 19220) to Chapter 3 of Division 19 of, to repeal Sections 19205, 19208, 19265, 19266, and 19268 of, and to repeal and add Section 19206 of, the Elections Code, relating to voting systems.

## LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Padilla. Certification of voting systems.

(1) Existing law establishes various procedures and criteria for the approval by the Secretary of State of voting systems, including ballot marking systems, to be used in elections.

This bill would recast and revise those provisions by changing the term “approval” to the term “certification” and would authorize the Secretary of State to certify, conditionally approve, as specified, or withhold approval of a voting system. The bill would provide that it is the intent of the Legislature that the Secretary of State certify all voting systems before they are used in future elections, adopt and publish testing standards, and encourage the development of voting systems that are easy for the public to audit. The bill would require the Secretary of State to adopt and publish voting system ~~standards~~, *standards and regulations*, as specified, and would require the Secretary of State to study the performance of the voting systems in use in the state.

This bill would additionally require the Secretary of State to publish requirements for the approval of *state-approved* testing agencies, as defined, that are authorized to conduct the testing and examination of voting systems and to approve and publish a list of authorized testing agencies. The bill also would provide that the person, corporation, or public agency applying for certification of a voting system is responsible for all costs associated with the testing of the voting system.

(2) *Existing law prohibits the use of a voting system unless it has received the approval of the Secretary of State, as specified.*

*This bill would provide that a voting system that has been approved for use on or before January 1, 2014, would be deemed to be certified or conditionally approved by the Secretary of State and would be authorized for use in elections. The bill would authorize a vendor or proprietor county that has submitted a voting system for federal qualification on or before January 1, 2014, to request approval of the voting system from the Secretary of State, as specified. The bill also would prohibit a jurisdiction from purchasing or contracting for a voting system unless the purchase or contract is conditioned on the certification or conditional approval by the Secretary of State before final acceptance or deployment, except as specified. The bill would further authorize the Secretary of State to grant conditional approval to a voting system or part of a voting system under specified circumstances.*

(2)

(3) Within 30 days after completing the examination of any voting system, existing law requires the Secretary of State to file a report stating whether the voting system can safely be used, as specified.

This bill would instead require the Secretary of State to file a report within 60 days after the completion of the examination of the voting system, as specified.

(3)

(4) Existing law authorizes a governing board to provide for the experimental use of a voting system in one or more precincts without formally adopting the system and provides that the experimental use of the system at the election is valid for all purposes as if it were lawfully adopted.

This bill would authorize a governing board to conduct a pilot program for the ~~experimental interim~~ use of voting systems, as specified, and would require the Secretary of State to adopt and publish regulations governing a pilot program: *voting system pilot programs*. No later than 9 months before the election at which a pilot program is proposed to be conducted, the bill would require the governing board to submit to the Secretary of State a plan for the proposed pilot program, and would require the Secretary of State to approve or reject the plan within 3 months of receipt of the plan. Upon completion of the pilot program, the bill would require the governing board to notify the Secretary of State in writing of any defect, fault, or failure in the hardware, software, or firmware of the voting system.

(4)

(5) Upon examination of a voting system or a ballot marking system, existing law provides that if a report is issued that states that the voting system or ballot marking system can be used, it is deemed approved by the Secretary of State for use at elections.

This bill would delete the above provision and would make conforming changes.

(6) *The Voting Modernization Bond Act of 2002 authorizes the issuance of bonds in the amount of \$200,000,000 pursuant to the State General Obligation Bond Law for the purpose of assisting counties in the purchase of updated voting systems.*

*This bill would authorize a county to contract and use fund moneys for the development, prototyping, and manufacturing of a voting system that is to be publicly owned and that uses nonproprietary software. The bill would require fund moneys that are used for the development,*

*prototyping, and manufacturing of a voting system to be conditioned on the future certification of the voting system by the Secretary of State, as specified.*

*(7) Existing law prohibits the Secretary of State, on and after January 1, 2005, from approving a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.*

*This bill would prohibit a city or county from contracting for or purchasing a direct recording electronic voting system unless the system has been certified by the Secretary of State, and would require all direct recording electronic voting systems in use as of January 1, 2006, to have received federal qualification and include an accessible voter verified paper audit trail, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Division 19 (commencing with  
2 Section 19001) of the Elections Code is amended to read:

3  
4 DIVISION 19. CERTIFICATION OF VOTING SYSTEMS

5  
6 SEC. 2. Section 19006 is added to the Elections Code, to read:

7 19006. (a) It is the intent of the Legislature that all voting  
8 systems be certified or conditionally approved by the Secretary of  
9 State, independent of voluntary federal qualification or  
10 certification, before they are used in future elections to ensure that  
11 the voting systems *have the ability to* meet accuracy, accessibility,  
12 and security standards.

13 (b) It is also the intent of the Legislature that the Secretary of  
14 State adopt and publish testing standards that meet or exceed  
15 federal voluntary standards set by the United States Election  
16 Assistance Commission or its successor agency.

17 (c) It is also the intent of the Legislature that the Secretary of  
18 State study and encourage the development of voting systems that  
19 use nonproprietary source code ~~or~~ *and* that are easy ~~for the public~~  
20 to audit.

21 SEC. 3. Section 19100 of the Elections Code is amended to  
22 read:

1 19100. The Secretary of State shall study and adopt regulations  
2 governing the use of voting machines, voting devices, vote  
3 tabulating devices, and ballot marking systems, and shall be  
4 responsible for certifying voting systems for use in this state.

5 SEC. 4. Section 19101 of the Elections Code is amended and  
6 renumbered to read:

7 19103. The Chairperson of the Senate Standing Committee on  
8 Elections and Constitutional Amendments and the Chairperson of  
9 the Assembly Standing Committee on Elections and Redistricting  
10 shall meet with the Secretary of State and assist the Secretary of  
11 State to the extent that the participation is not incompatible with  
12 their positions as Members of the Legislature. For purposes of this  
13 division, the chairpersons of the committees named shall constitute  
14 a joint interim legislative committee on the subject of this chapter  
15 and Chapter 3 (commencing with Section 19200) and shall have  
16 the powers and duties imposed upon those committees by the Joint  
17 Rules of the Senate and Assembly.

18 SEC. 5. Section 19101 is added to the Elections Code, to read:

19 19101. (a) The Secretary of State shall adopt and publish  
20 voting system standards *and regulations governing the use of*  
21 *voting systems*. The Secretary of State ~~may also adopt, in whole~~  
22 ~~or in part, voluntary federal voting system standards established~~  
23 ~~by the United States Election Assistance Commission or its~~  
24 ~~successor agency shall adopt standards that meet or exceed federal~~  
25 ~~voluntary voting system guidelines set forth by the United States~~  
26 ~~Election Assistance Commission or its successor agency. Until~~  
27 ~~state standards are adopted, the most recently adopted federal~~  
28 ~~voluntary voting system guidelines shall be used as state standards.~~

29 (b) Voting system standards adopted by the Secretary of State  
30 pursuant to subdivision (a) shall include, but not be limited to, all  
31 of the following requirements:

32 (1) The machine or device and its software shall be suitable for  
33 the purpose for which it is intended.

34 (2) The system shall preserve the secrecy of the ballot.

35 (3) The system shall be safe from fraud or manipulation.

36 (4) The system shall be accessible to voters with disabilities  
37 ~~and to voters who require assistance in a language other than~~  
38 ~~English if the language is one in which a ballot or ballot materials~~  
39 ~~are required to be made available to voters pursuant to Section~~  
40 ~~19242 and applicable federal laws.~~

1 (5) *The system shall be accessible to voters who require*  
2 *assistance in a language other than English if the language is one*  
3 *in which a ballot or ballot materials are required to be made*  
4 *available to voters pursuant to Section 14201 and applicable*  
5 *federal laws.*

6 SEC. 6. Section 19102 of the Elections Code is amended and  
7 renumbered to read:

8 19104. The Secretary of State may investigate any alleged  
9 violation of this code or the Secretary of State's regulations with  
10 the power to subpoena all necessary persons and records.

11 SEC. 7. Section 19102 is added to the Elections Code, to read:

12 19102. The Secretary of State shall study the performance of  
13 voting systems in use in the state.

14 SEC. 8. Section 19103 of the Elections Code is amended and  
15 renumbered to read:

16 19212. (a) (1) No later than 10 business days after the  
17 Secretary of State certifies or conditionally approves the use of a  
18 new or updated voting system, the ~~applicant~~ *vendor or proprietor*  
19 *county seeking certification or approval* of the voting system shall  
20 cause an exact copy of the approved source code for each  
21 component of the voting system, including complete build and  
22 configuration instructions and related documents for compiling  
23 the source code into object code, to be transferred directly from  
24 *either* the United States Election Assistance Commission or the  
25 voting system testing agency that evaluated the voting system and  
26 ~~is accredited by the United States Election Assistance Commission;~~  
27 *approved by the Secretary of State*, and deposited into an approved  
28 escrow facility.

29 (2) No later than 10 business days after the Secretary of State  
30 certifies *or conditionally approves* a new or updated ballot marking  
31 system, the ~~applicant~~ *vendor or proprietor county seeking*  
32 *certification or approval* of the ballot marking system shall cause  
33 an exact copy of the approved source code for each component of  
34 the ballot marking system, including complete build and  
35 configuration instructions and related documents for compiling  
36 the source code into object code, to be deposited into an approved  
37 escrow facility.

38 (b) The Secretary of State shall adopt regulations relating to all  
39 of the following:

1 (1) The definition of source code components of a voting system  
2 or ballot marking system, including source code for all firmware  
3 and software of the voting system or ballot marking system.  
4 Firmware and software shall include commercial off-the-shelf or  
5 other third-party firmware and software that is available and able  
6 to be disclosed by the ~~applicant~~ *vendor or proprietor county*  
7 *seeking certification or approval of the* a voting system or ballot  
8 marking system.

9 (2) Specifications for the escrow facility, including security and  
10 environmental specifications necessary for the preservation of the  
11 voting system or ballot marking system source codes.

12 (3) Procedures for submitting voting system or ballot marking  
13 system source codes.

14 (4) Criteria for access to voting system or ballot marking system  
15 source codes.

16 (5) Requirements for the applicant to include in the materials  
17 deposited in escrow build and configuration instructions and  
18 documents so that a neutral third party may create, from the source  
19 codes in escrow, executable object codes identical to the code  
20 installed on certified *or conditionally approved* voting systems or  
21 ballot marking systems.

22 (c) The Secretary of State shall have reasonable access to the  
23 materials placed in escrow, under any of the following  
24 circumstances:

25 (1) In the course of an investigation or prosecution regarding  
26 vote counting or ballot marking equipment or procedures.

27 (2) Upon a finding by the Secretary of State that an escrow  
28 facility or escrow company is unable or unwilling to maintain  
29 materials in escrow in compliance with this section.

30 (3) In order to fulfill the provisions of this chapter related to the  
31 examination and certification *or conditional approval* of voting  
32 systems or ballot marking systems.

33 (4) In order to verify that the software on a voting system is  
34 identical to the certified *or conditionally approved* version.

35 (5) For any other purpose deemed necessary to fulfill the  
36 provisions of this code or Section 12172.5 of the Government  
37 Code.

38 (d) The Secretary of State may seek injunctive relief requiring  
39 the elections officials, approved escrow facility, or any vendor or  
40 manufacturer of a voting system or part of a voting system to

1 comply with this section and related regulations. Venue for a  
2 proceeding under this section shall be exclusively in Sacramento  
3 County.

4 (e) This section applies to all elections.

5 SEC. 9. The heading of Chapter 3 (commencing with Section  
6 19200) of Division 19 of the Elections Code is amended to read:

7  
8 CHAPTER 3. CERTIFICATION OF VOTING SYSTEMS  
9

10 SEC. 10. The heading of Article 1 (commencing with Section  
11 19200) of Chapter 3 of Division 19 of the Elections Code is  
12 amended to read:

13  
14 Article 1. Procedures for Certification of Voting Systems  
15

16 SEC. 11. Section 19200.5 of the Elections Code is amended  
17 and renumbered to read:

18 19204. The Secretary of State shall not certify or conditionally  
19 approve any voting system that includes features that permit a  
20 voter to produce, *and leave the polling place with*, a copy or  
21 facsimile of the ballot cast by the voter at that polling place.

22 SEC. 12. Section 19201 of the Elections Code is amended and  
23 renumbered to read:

24 19202. (a) A voting system, in whole or in part, shall not be  
25 used unless it has been certified or conditionally approved by the  
26 Secretary of State prior to any election at which it is to be ~~first~~  
27 used.

28 (b) *A voting system that has been approved for use on or before*  
29 *January 1, 2014, shall be deemed certified or conditionally*  
30 *approved by the Secretary of State and may be used in an election.*

31 (c) *A vendor or proprietor county that has submitted a voting*  
32 *system for federal qualification on or before January 1, 2014, upon*  
33 *obtaining federal qualification, may request approval of the voting*  
34 *system from the Secretary of State based on the examination and*  
35 *review requirements in place before January 1, 2014.*

36 (d) *A jurisdiction shall not purchase or contract for a voting*  
37 *system, in whole or in part, unless the purchase or contract is*  
38 *conditioned on the certification or conditional approval by the*  
39 *Secretary of State before final acceptance or deployment.*



1     (e) Notwithstanding subdivision (d), a jurisdiction may purchase,  
2     or contract for the development of, a voting system that uses open  
3     and nonproprietary software, including a prototype or prototypes  
4     of all or any part of the new voting system, without obtaining prior  
5     certification or conditional approval by the Secretary of State.

6     SEC. 13. Section 19201 is added to the Elections Code, to read:

7     19201. (a) The Secretary of State may ~~conditionally approve~~  
8     ~~a voting system or part of a voting system in lieu of certification~~  
9     ~~grant conditional approval to a voting system or part of a voting~~  
10    ~~system under any of the following circumstances:~~

11    ~~(a)~~

12    ~~(1) A voting system or part of a voting system is out of~~  
13    ~~compliance due to a regulatory change was decertified as a result~~  
14    ~~of a review by the Secretary of State pursuant to Section 19232.~~

15    ~~(2) A certified voting system or part of that voting system is~~  
16    ~~modified to comply with voting system standards or changes in~~  
17    ~~statute.~~

18    ~~(3) A jurisdiction intends to pilot the implementation of a~~  
19    ~~publicly owned voting system using nonproprietary software~~  
20    ~~pursuant to Section 19209.~~

21    ~~(b) A voting system or part of a voting system has been~~  
22    ~~decertified that receives conditional approval may be used in any~~  
23    ~~election if it meets the conditions for use as set forth by the~~  
24    ~~Secretary of State.~~

25    ~~(c) A voting system or part of a voting system will be~~  
26    ~~implemented for experimental use in a pilot program pursuant to~~  
27    ~~Section 19209. The Secretary of State may withdraw conditional~~  
28    ~~approval at any time pursuant to Section 19232.~~

29    SEC. 14. Section 19202 of the Elections Code is amended and  
30    renumbered to read:

31    19210. (a) A person, corporation, or public agency owning or  
32    having an interest in the sale or acquisition of a voting system or  
33    a part of a voting system may apply to the Secretary of State for  
34    certification that includes testing and examination of the applicant's  
35    system by a state-approved testing agency *or expert technicians*  
36    and a report on the findings, which shall include the accuracy and  
37    efficiency of the voting system. As part of its application, the  
38    applicant shall notify the Secretary of State in writing of any known  
39    defect, fault, or failure of the version of the hardware, software,  
40    or firmware of the voting system or a part of the voting system

1 submitted. The Secretary of State shall not begin his or her  
2 certification process until he or she receives a completed  
3 application. The applicant shall also notify the Secretary of State  
4 in writing of any defect, fault, or failure of the version of the  
5 hardware, software, or firmware of the voting system or a part of  
6 the voting system submitted that is discovered after the application  
7 is submitted and before the Secretary of State submits the report  
8 required by Section 19213. The Secretary of State shall complete  
9 his or her certification process without undue delay.

10 (b) The Secretary of State shall publish and make publicly  
11 available on his or her Internet Web site a quarterly report of  
12 regulatory activities related to voting systems.

13 (c) After receiving an applicant's written notification of a defect,  
14 fault, or failure, the Secretary of State shall notify the United States  
15 Election Assistance Commission or its successor entity of the  
16 problem as soon as practicable so as to present a reasonably  
17 complete description of the problem. The Secretary of State shall  
18 subsequently submit a report regarding the problem to the United  
19 States Election Assistance Commission or its successor entity. The  
20 report shall include any report regarding the problem submitted  
21 to the Secretary of State by the applicant.

22 (d) As used in this article:

23 (1) "Defect" means any flaw in the hardware or documentation  
24 of a certified or conditionally approved voting system that could  
25 result in a state of unfitness for use or nonconformance to the  
26 manufacturer's specifications or applicable law.

27 (2) "Failure" means a discrepancy between the external results  
28 of the operation of any software or firmware in a certified or  
29 conditionally approved voting system and the manufacturer's  
30 product requirements for that software or firmware or applicable  
31 law.

32 (3) "Fault" means a step, process, or data definition in any  
33 software or firmware in a certified or conditionally approved voting  
34 system that is incorrect under the manufacturer's program  
35 specification or applicable law.

36 SEC. 15. Section 19203 of the Elections Code is amended and  
37 renumbered to read:

38 19223. The Secretary of State shall use a state-approved testing  
39 agency *or expert technicians* to examine *and test* voting systems  
40 or parts of voting systems proposed for use or sale in this state.

1 He or she shall furnish a complete report of the findings of the  
2 examination and testing to the Governor and the Attorney General.

3 SEC. 16. Section 19204 of the Elections Code is amended and  
4 renumbered to read:

5 19211. (a) Prior to publishing his or her decision to certify,  
6 conditionally approve, or withhold certification of a voting system  
7 or part of a voting system, the Secretary of State shall provide for  
8 a 30-day public review period and conduct a public hearing to give  
9 persons interested an opportunity to review testing and examination  
10 reports and express their views for or against certification or  
11 conditional approval of the voting system.

12 (b) The Secretary of State shall give notice of the public review  
13 period and hearing in the manner prescribed in Section 6064 of  
14 the Government Code in a newspaper of general circulation  
15 published in Sacramento County. The Secretary of State shall also  
16 provide notice of the ~~public review period~~ and hearing on his or  
17 her Internet Web site. The Secretary of State shall transmit written  
18 notice of the ~~public review period~~ and hearing, at least 30 days  
19 prior to the public review period and hearing, to each county  
20 elections official, to any person that the Secretary of State believes  
21 will be interested in the public review period and hearing, and to  
22 any person who requests, in writing, notice of the public review  
23 period and hearing.

24 (c) The decision of the Secretary of State to certify, conditionally  
25 approve, or withhold ~~approval~~ *certification* of a voting system or  
26 part of a voting system shall be in writing and shall state the  
27 findings of the Secretary of State. The decision shall be open to  
28 public inspection.

29 SEC. 17. Section 19205 of the Elections Code is repealed.

30 SEC. 18. Section 19206 of the Elections Code is repealed.

31 SEC. 19. Section 19206 is added to the Elections Code, to read:

32 19206. If more than one voting system is used to count ballots,  
33 the names of candidates shall, insofar as possible, be placed on  
34 the primary voting system. If more than one voting system or a  
35 combination of a voting system and paper ballots is used to count  
36 ballots, a single ballot measure or the candidates for a single office  
37 may not be split between voting systems or between a voting  
38 system and paper ballots.

39 SEC. 20. Section 19207 of the Elections Code is amended and  
40 renumbered to read:

19213. Within 60 days after the completion of the examination of a voting system, the Secretary of State shall make publicly available a report stating whether the voting system has been certified or conditionally approved, or whether certification has been withheld. The report shall also contain a written or printed description and drawings and photographs that clearly identify the machine or device and its mechanical operation.

SEC. 21. Section 19208 of the Elections Code is repealed.

SEC. 22. Section 19209 of the Elections Code is amended and renumbered to read:

19214. Within 10 days after issuing and filing a certification decision and associated testing reports, the Secretary of State shall make available to the public a full and complete copy of the certification report and all associated documentation, except that portions of the report or documentation that contain information that the Secretary of State determines to be confidential or proprietary shall not be made publicly available. The Secretary of State shall also notify the board of supervisors and elections official of each county of the availability of the report and associated documentation.

SEC. 23. Section 19210 of the Elections Code is amended and renumbered to read:

19207. The governing board may adopt for use at elections any kind of voting system, any combination of voting systems, or any combination of a voting system and paper ballots, provided that the voting system or systems involved have been certified or conditionally approved by the Secretary of State *or specifically authorized by law pursuant to Section 19201*. The voting system or systems may be used at any or all elections held in any county, city, or any of their political subdivisions for voting, registering, and counting votes cast. If more than one voting system or a combination of a voting system and paper ballots is used at an election, the candidates for a single office may not be split between voting systems or between a voting system and paper ballots.

SEC. 24. Section 19211 of the Elections Code is amended and renumbered to read:

19209. (a) The governing board, without formally adopting a voting system, may provide for the ~~experimental~~ *interim* use of a voting system in a pilot program held at an election in one or more ~~precincts, as follows:~~ *precincts*.

1     **(b)** *A voting system that is to be used in a pilot program shall*  
2 *be certified for use in California. If a voting system is publicly*  
3 *owned and uses nonproprietary software, it may be used in a pilot*  
4 *program with conditional approval from the Secretary of State*  
5 *prior to full certification.*

6     **(c)** *A voting system that is used at an election pursuant to this*  
7 *section is valid for all purposes as if it were lawfully adopted and*  
8 *certified.*

9     ~~**(1)** If the voting system is publicly owned, uses nonproprietary~~  
10 ~~software, or implements risk-limiting audits conducted pursuant~~  
11 ~~to Section 15560, the voting system need not be certified or~~  
12 ~~conditionally approved prior to its experimental use. Its use at the~~  
13 ~~election is valid for all purposes as if it were lawfully adopted and~~  
14 ~~certified.~~

15     ~~**(2)**~~

16     **(d)** No later than nine months before the election at which the  
17 pilot program of a voting system is proposed to be conducted, the  
18 governing board shall submit to the Secretary of State a plan for  
19 the pilot program. The Secretary of State shall approve or reject  
20 the plan no later than three months after receipt of the plan.

21     ~~**(3)**~~

22     **(e)** *The votes cast on a voting system during a pilot program*  
23 *shall be subject to risk-limiting audits pursuant to Section 19233.*

24     **(f)** Upon completion of the pilot program, the governing board  
25 shall notify the Secretary of State in writing of any defect, fault,  
26 or failure of the hardware, software, or firmware of the voting  
27 system or a part of the voting system.

28     ~~**(b)**~~

29     **(g)** *A voting system pilot program shall not be conducted in a*  
30 *legally binding election without the approval of the Secretary of*  
31 *State. The Secretary of State shall adopt and publish regulations*  
32 *governing voting system pilot programs for the experimental use*  
33 *of voting systems.*

34     SEC. 25. Section 19212 of the Elections Code is amended and  
35 renumbered to read:

36     19208. The governing board may provide for the payment of  
37 the cost of the voting system equipment in any manner and by any  
38 method as it deems best for local interests, and also may for that  
39 purpose issue bonds, certificates of indebtedness, or other  
40 obligations that shall be a charge on the county or city. The bonds,

1 certificates, or other obligations may be issued with or without  
2 interest, payable at any time as the authorities may determine, but  
3 shall not be issued or sold at less than par. The governing board  
4 may enter into lease agreements or lease-purchase agreements for  
5 the use of equipment.

6 SEC. 26. Section 19212.5 of the Elections Code is amended  
7 and renumbered to read:

8 19215. (a) If a voting system or a part of a voting system has  
9 been certified or conditionally approved by the Secretary of State,  
10 the vendor or proprietor county, in cases where the system is  
11 publicly owned, shall notify the Secretary of State and all local  
12 elections officials who use the system in writing of any defect,  
13 fault, or failure of the hardware, software, or firmware of the voting  
14 system or a part of the voting system within 30 calendar days after  
15 the vendor learns of the defect, fault, or failure.

16 (b) After receiving written notification of a defect, fault, or  
17 failure pursuant to subdivision (a), the Secretary of State shall  
18 notify the United States Election Assistance Commission or its  
19 successor-~~entity~~ *agency* of the problem as soon as practicable so  
20 as to present a reasonably complete description of the problem.  
21 The Secretary of State shall subsequently submit a report regarding  
22 the problem to the United States Election Assistance Commission  
23 or its successor-~~entity~~ *agency*. The report shall include any report  
24 regarding the problem submitted to the Secretary of State.

25 SEC. 27. Section 19213 of the Elections Code is amended and  
26 renumbered to read:

27 19216. If a voting system or a part of a voting system has been  
28 certified or conditionally approved by the Secretary of State, it  
29 shall not be changed or modified until the Secretary of State has  
30 been notified in writing and has determined that the change or  
31 modification does not impair its accuracy and efficiency sufficient  
32 to require a reexamination and recertification, *or* conditional  
33 ~~approval, or reapproval~~ *approval*, pursuant to this article. The  
34 Secretary of State may adopt rules and regulations governing the  
35 procedures to be followed in making his or her determination as  
36 to whether the change or modification impairs accuracy or  
37 efficiency.

38 SEC. 28. Section 19214 of the Elections Code is amended and  
39 renumbered to read:

1 19217. The Secretary of State may seek injunctive and  
2 administrative relief if a voting system or a part of a voting system  
3 has been compromised by the addition or deletion of hardware,  
4 software, or firmware without prior approval or is defective due  
5 to a known hardware, software, or firmware defect, fault, or failure  
6 that has not been disclosed pursuant to Section 19210 or 19215.

7 SEC. 29. Section 19214.5 of the Elections Code is amended  
8 and renumbered to read:

9 19218. (a) The Secretary of State may seek all of the following  
10 relief for an unauthorized change in hardware, software, or  
11 firmware in a voting system certified or conditionally approved  
12 in California:

13 (1) A civil penalty from the offending party or parties, not to  
14 exceed ten thousand dollars (\$10,000) per violation. For purposes  
15 of this subdivision, each voting system component found to contain  
16 the unauthorized hardware, software, or firmware shall be  
17 considered a separate violation. A penalty imposed pursuant to  
18 this subdivision shall be apportioned 50 percent to the county in  
19 which the violation occurred, if applicable, and 50 percent to the  
20 office of the Secretary of State for purposes of bolstering voting  
21 systems security efforts.

22 (2) Immediate commencement of proceedings to withdraw  
23 certification or conditional approval for the voting system in  
24 question.

25 (3) Prohibiting the manufacturer or vendor of a voting system  
26 from doing elections-related business in the state for one, two, or  
27 three years.

28 (4) Refund of all moneys paid by a local agency for a voting  
29 system or a part of a voting system that is compromised by an  
30 unauthorized change or modification, whether or not the voting  
31 system has been used in an election.

32 (5) Any other remedial actions authorized by law to prevent  
33 unjust enrichment of the offending party.

34 (b) (1) The Secretary of State may seek all of the following  
35 relief for a known but undisclosed defect, fault, or failure in a  
36 voting system or part of a voting system certified or conditionally  
37 approved in California:

38 (A) Refund of all moneys paid by a local agency for a voting  
39 system or part of a voting system that is defective due to a known

1 but undisclosed defect, fault, or failure, whether or not the voting  
2 system has been used in an election.

3 (B) A civil penalty from the offending party or parties, not to  
4 exceed fifty thousand dollars (\$50,000) per violation. For purposes  
5 of this subdivision, each defect, fault, or failure shall be considered  
6 a separate violation. A defect, fault, or failure constitutes a single  
7 violation regardless of the number of voting system units in which  
8 the defect, fault, or failure is found.

9 (C) In addition to any other penalties or remedies established  
10 by this section, the offending party or parties shall be liable in the  
11 amount of one thousand dollars (\$1,000) per day after the  
12 applicable deadline established in Section 19215 until the required  
13 disclosure is filed with the Secretary of State.

14 (2) A penalty imposed pursuant to subparagraph (B) or (C) of  
15 paragraph (1) shall be deposited in the General Fund.

16 (c) Before seeking any measure of relief under this section, the  
17 Secretary of State shall hold a public hearing. The Secretary of  
18 State shall give notice of the hearing in the manner prescribed by  
19 Section 6064 of the Government Code in a newspaper of general  
20 circulation published in Sacramento County. The Secretary of  
21 State also shall transmit written notice of the hearing, at least 30  
22 days prior to the hearing, to each county elections official, the  
23 offending party or parties, a person that the Secretary of State  
24 believes will be interested in the hearing, and a person who  
25 requests, in writing, notice of the hearing.

26 (d) The decision of the Secretary of State to seek relief under  
27 this section shall be in writing and state his or her findings. The  
28 decision shall be open to public inspection.

29 SEC. 30. Section 19215 of the Elections Code is amended and  
30 renumbered to read:

31 19219. (a) The Secretary of State may seek injunctive relief  
32 requiring an elections official, or any vendor or manufacturer of  
33 a voting machine, voting system, or vote tabulating device, to  
34 comply with the requirements of this code, the regulations of the  
35 Secretary of State, and the specifications for voting machines,  
36 voting devices, vote tabulating devices, and any software used for  
37 each, including the programs and procedures for vote tabulating  
38 and testing.

39 (b) Venue for a proceeding under this section shall be  
40 exclusively in Sacramento County.



1 SEC. 31. Section 19216 of the Elections Code is amended and  
2 renumbered to read:

3 19203. The Secretary of State shall not certify or conditionally  
4 approve a voting system or a part of a voting system that uses  
5 paper ballots unless the paper used for the ballots is of sufficient  
6 quality that it maintains its integrity and readability throughout  
7 the retention period specified in Chapter 4 (commencing with  
8 Section 17300) of Division 17.

9 SEC. 32. Section 19217 of the Elections Code is amended and  
10 renumbered to read:

11 19205. A voting system shall comply with all of the following:

12 (a) No part of the voting system shall be connected to the  
13 Internet at any time.

14 (b) No part of the voting system shall electronically receive or  
15 transmit election data through an exterior communication network,  
16 including the public telephone system, if the communication  
17 originates from or terminates at a polling place, satellite location,  
18 or counting center.

19 (c) No part of the voting system shall receive or transmit  
20 wireless communications or wireless data transfers.

21 SEC. 33. The heading of Article 2 (commencing with Section  
22 19220) of Chapter 3 of Division 19 of the Elections Code is  
23 amended and renumbered to read:

24  
25 Article 3. Inspection of Certified and Conditionally Approved  
26 Voting Systems  
27

28 SEC. 34. Section 19220 of the Elections Code is amended and  
29 renumbered to read:

30 19230. The elections official of any county or city using a  
31 voting system shall inspect the machines or devices at least once  
32 every two years to determine their accuracy. Any county or city  
33 using leased or rented equipment shall determine if the equipment  
34 has been inspected for accuracy within the last two years before  
35 using it for any election. The inspection shall be made in  
36 accordance with regulations adopted and promulgated by the  
37 Secretary of State. The elections official shall certify the results  
38 of the inspection to the Secretary of State.

39 SEC. 35. Article 2 (commencing with Section 19220) is added  
40 to Chapter 3 of Division 19 of the Elections Code, to read:

## Article 2. Voting System Testing Agencies

19220. For purposes of this division, ~~“testing”~~ *“state-approved testing agency”* means a person or entity that is authorized *by the Secretary of State* to conduct the testing and examination of a voting system in connection with certification *or conditional approval* of the voting system pursuant to this division.

19221. The Secretary of State shall do all of the following:

(a) Publish requirements for the approval of *state-approved* testing agencies that are authorized to conduct the testing and examination of voting systems. *Until the requirements are published, federally accredited voting system laboratories shall be used to conduct testing and examination.*

(b) Approve and publish a list of authorized *state-approved* testing agencies.

19222. The person, corporation, or public agency applying for certification of a voting system is responsible for all costs associated with the testing of the voting system.

19223. The Secretary of State may contract with one or more expert technicians to assist with the certification of a voting system, including testing and examination of the voting system.

SEC. 36. Section 19221 of the Elections Code is amended and renumbered to read:

19231. (a) If the Secretary of State has reason to believe that a local inspection of equipment is not adequate, he or she may cause the equipment to be reexamined, at any time prior to six months before a statewide election, to ensure that the voting system or parts of the voting system perform to adopted standards and tabulate votes accurately.

(b) For the purpose of reexamining voting equipment, the Secretary of State ~~shall~~ *may* use state-approved testing agencies *or expert technicians* at the cost of the elections official.

(c) The Secretary of State shall furnish a complete report of the findings to the Governor, to the Attorney General, to each county elections official, to the chairpersons of the elections committees of the Assembly and Senate, and to the manufacturer of the equipment.

SEC. 37. Section 19222 of the Elections Code is amended and renumbered to read:

1 19232. The Secretary of State shall review voting systems  
2 periodically to determine if they are defective, obsolete, or  
3 otherwise unacceptable. The Secretary of State has the right to  
4 withdraw his or her certification or conditional approval previously  
5 granted under this chapter of any voting system or part of a voting  
6 system should it be defective or prove unacceptable after such  
7 review. Six months' notice shall be given before withdrawing  
8 certification or conditional approval unless the Secretary of State  
9 for good cause shown makes a determination that a shorter notice  
10 period is necessary. Any withdrawal by the Secretary of State of  
11 his or her previous certification or conditional approval of a voting  
12 system or part of a voting system shall not be effective as to ~~an~~  
13 *any* election conducted within six months of that withdrawal.

14 SEC. 38. Section 19223 of the Elections Code is amended and  
15 renumbered to read:

16 19233. The Secretary of State shall conduct random audits of  
17 the software installed on direct recording electronic voting systems,  
18 as defined in Section 19271, to ensure that the installed software  
19 is identical to the software that has been approved for use on that  
20 voting system. The Secretary of State shall take steps to ensure  
21 that the process for conducting random audits does not intentionally  
22 cause a direct recording electronic voting system to become more  
23 vulnerable to any unauthorized changes to the software that has  
24 been approved for its use.

25 SEC. 39. The heading of Article 2.5 (commencing with Section  
26 19225) of Chapter 3 of Division 19 of the Elections Code is  
27 amended and renumbered to read:

28  
29 Article 4. Accessible Voting Systems  
30

31 SEC. 40. Section 19225 of the Elections Code is amended and  
32 renumbered to read:

33 19240. The Legislature finds and declares as follows:

34 (a) Microchip and digital technologies are increasingly changing  
35 the way Americans vote.

36 (b) State and political subdivisions are replacing antiquated  
37 voting methods and machines with computer and electronic-based  
38 voting systems, but nonvisual access, whether by speech, braille,  
39 or other appropriate means, is often overlooked in certifying and  
40 purchasing the latest voting technology.

1 (c) Voting technology and systems that allow the voter to access  
2 and select information solely through a visual means are a barrier  
3 to access by individuals who are blind or visually impaired, thereby  
4 discouraging them from exercising the right to vote, the most  
5 fundamental right of citizenship in a free and democratic society.

6 (d) Software and hardware adaptations have been created so  
7 that voters can interact with voting technology and systems through  
8 both visual and nonvisual means allowing blind and visually  
9 impaired people to cast a secret ballot and independently verify  
10 their vote.

11 (e) In promoting full participation in the electoral process, the  
12 goals of the state and its political subdivisions must recognize the  
13 incontrovertible right of all citizens regardless of blindness or  
14 visual impairment to vote.

15 (f) This right must include the opportunity for individuals who  
16 are blind or visually impaired to cast and verify their ballots  
17 independently.

18 SEC. 41. Section 19226 of the Elections Code is amended and  
19 renumbered to read:

20 19241. As used in this article:

21 (a) “Access” means the ability to receive, use, select, and  
22 manipulate data and operate controls included in voting technology  
23 and systems.

24 (b) “Nonvisual” means synthesized speech, braille, and other  
25 output methods that do not require sight.

26 SEC. 42. Section 19227 of the Elections Code is amended and  
27 renumbered to read:

28 19242. (a) The Secretary of State shall adopt and publish rules  
29 and regulations governing any voting technology and systems used  
30 by the state or any political subdivision that provide blind and  
31 visually impaired individuals with access that is equivalent to that  
32 provided to individuals who are not blind or visually impaired,  
33 including the ability for the voter to cast and verify all selections  
34 made by both visual and nonvisual means.

35 (b) State voting system standards shall require voting systems  
36 to provide blind and visually impaired individuals with access that  
37 is equivalent to that provided to individuals who are not blind or  
38 visually impaired.

39 (c) At each polling place, at least one voting unit certified or  
40 conditionally approved by the Secretary of State shall provide

1 access to individuals with disabilities, including nonvisual  
2 accessibility for individuals who are blind or visually impaired  
3 and accessibility for individuals who have other disabilities as set  
4 forth by the federal Help America Vote Act of 2002 (42 U.S.C.  
5 Sec. 15301 et seq.).

6 (d) A local agency is not required to comply with subdivision  
7 (c) unless sufficient funds are available to implement that provision.  
8 Funds received from the proceeds of the Voting Modernization  
9 Bond Act of 2002 (Article 5 (commencing with Section 19250)),  
10 from federal funds made available to purchase new voting systems,  
11 or from any other source except the General Fund, shall be used  
12 for that purpose.

13 SEC. 43. Section 19227.5 of the Elections Code is amended  
14 and renumbered to read:

15 19243. In requiring nonvisual access pursuant to this article,  
16 the Secretary of State shall obtain recommendations from  
17 representatives of blind consumer organizations, experts in  
18 accessible software and hardware design, and any other individual  
19 or organization the Secretary of State determines to be appropriate.

20 SEC. 44. Section 19228 of the Elections Code is amended and  
21 renumbered to read:

22 19244. Compliance with this article in regard to voting  
23 technology and systems purchased prior to the effective date of  
24 this article shall be achieved at the time of procurement of an  
25 upgrade or replacement of existing voting equipment or systems.

26 SEC. 45. Section 19229 of the Elections Code is amended and  
27 renumbered to read:

28 19245. (a) A person injured by a violation of this article may  
29 maintain an action for injunctive relief to enforce this article.

30 (b) An action for injunctive relief shall be commenced within  
31 four years after the cause of action accrues.

32 (c) For purposes of this section, a cause of action for a  
33 continuing violation accrues at the time of the latest violation.

34 SEC. 46. Section 19229.5 of the Elections Code is amended  
35 and renumbered to read:

36 19246. This article does not apply to voting by vote by mail  
37 ballot.

38 SEC. 47. The heading of Article 3 (commencing with Section  
39 19230) of Chapter 3 of Division 19 of the Elections Code is  
40 amended and renumbered to read:

Article 5. Voting Modernization Bond Act of 2002  
(Shelley-Hertzberg Act)

SEC. 48. Section 19230 of the Elections Code is amended and renumbered to read:

19250. This article shall be known and may be cited as the Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act).

SEC. 49. Section 19231 of the Elections Code is amended and renumbered to read:

19251. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), except as otherwise provided herein, is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this article, and the provisions of that law are included in this article as though set out in full.

SEC. 50. Section 19232 of the Elections Code is amended and renumbered to read:

19252. As used in this article:

(a) “Board” means the Voting Modernization Board, established pursuant to Section 19256.

(b) “Bond” means a state general obligation bond issued pursuant to this article adopting the provisions of the State General Obligation Bond Law.

(c) “Bond act” means this article authorizing the issuance of state general obligation bonds and adopting the State General Obligation Bond Law by reference.

(d) “Committee” means the Voting Modernization Finance Committee, established pursuant to Section 19253.

(e) “Fund” means the Voting Modernization Fund, created pursuant to subdivision (b) of Section 19254.

(f) “Voting system” means any voting machine, voting device, or vote tabulating device that does not use prescored punch card ballots.

SEC. 51. Section 19233 of the Elections Code is amended and renumbered to read:

19253. (a) The Voting Modernization Finance Committee is hereby established for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this article.

(b) The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives, all of whom shall serve without compensation, and a majority of whom shall constitute a quorum. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(c) For purposes of this article, the Voting Modernization Finance Committee is “the committee” as that term is used in the State General Obligation Bond Law.

SEC. 52. Section 19234 of the Elections Code is amended and renumbered to read:

19254. (a) The committee may create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of not more than two hundred million dollars (\$200,000,000), exclusive of refunding bonds, in the manner provided herein for the purpose of creating a fund to assist counties in the purchase of updated voting systems.

(b) The proceeds of bonds issued and sold pursuant to this article shall be deposited in the Voting Modernization Fund, which is hereby established.

(c) A county is eligible to apply to the board for fund money if it meets all of the following requirements:

(1) The county has purchased a new voting system after January 1, 1999, and is continuing to make payments on that system on the date that this article becomes effective.

(2) The county matches fund moneys at a ratio of one dollar (\$1) of county moneys for every three dollars (\$3) of fund moneys.

(3) The county has not previously requested fund money for the purchase of a new voting system. Applications for expansion of an existing system or components related to a previously certified or conditionally approved application shall be accepted.

(d) *(1) Fund moneys shall only be used to purchase systems certified or conditionally approved by the Secretary of State, pursuant to this division, and fund moneys shall not be used to purchase a voting system that uses prescored punch-card ballots. State.*

*(2) A county may contract and use fund moneys for the development, prototyping, and manufacturing of a voting system if the system is to be publicly owned and uses nonproprietary software. Fund moneys used for the development, prototyping, and*

1 *manufacturing of a voting system shall be conditioned on the future*  
2 *certification of the voting system by the Secretary of State. If the*  
3 *voting system does not receive certification by the Secretary of*  
4 *State, the county shall repay the fund moneys to the board.*

5 (3) *Fund moneys shall not be used to purchase a voting system*  
6 *that uses prescored punch card ballots.*

7 (e) Any voting system purchased using bond funds that does  
8 not require a voter to directly mark on the ballot must produce, at  
9 the time the voter votes his or her ballot or at the time the polls  
10 are closed, a paper version or representation of the voted ballot or  
11 of all the ballots cast on a unit of the voting system. The paper  
12 version shall not be provided to the voter but shall be retained by  
13 elections officials for use during the 1 percent manual recount or  
14 other recount, audit, or contest.

15 SEC. 53. Section 19234.5 of the Elections Code is amended  
16 and renumbered to read:

17 19255. The Legislature may amend subdivisions (c) and (d)  
18 of Section 19254 and Section 19256 by a statute, passed in each  
19 house of the Legislature by rollcall vote entered in the respective  
20 journals, by not less than two-thirds of the membership in each  
21 house concurring, if the statute is consistent with, and furthers the  
22 purposes of, this article.

23 SEC. 54. Section 19235 of the Elections Code is amended and  
24 renumbered to read:

25 19256. The Voting Modernization Board is hereby established  
26 and designated the “board” for purposes of the State General  
27 Obligation Bond Law, and for purposes of administering the Voting  
28 Modernization Fund. The board consists of five members, three  
29 selected by the Governor and two selected by the Secretary of  
30 State. The board shall have the authority to reject any application  
31 for fund money it deems inappropriate, excessive, or that does not  
32 comply with the intent of this article. A county whose application  
33 is rejected shall be allowed to submit an amended application.

34 SEC. 55. Section 19236 of the Elections Code is amended and  
35 renumbered to read:

36 19257. (a) All bonds authorized by this article, when duly sold  
37 and delivered as provided herein, constitute valid and legally  
38 binding general obligations of the State of California, and the full  
39 faith and credit of the state is hereby pledged for the punctual  
40 payment of both principal and interest thereof. The bonds issued



1 pursuant to this article shall be repaid within 10 years from the  
2 date they are issued.

3 (b) There shall be collected annually, in the same manner and  
4 at the same time as other state revenue is collected, a sum of  
5 money, in addition to the ordinary revenues of the state, sufficient  
6 to pay the principal of, and interest on, the bonds as provided  
7 herein. All officers required by law to perform any duty in regard  
8 to the collection of state revenues shall collect this additional sum.

9 (c) On the dates on which funds are remitted pursuant to Section  
10 16676 of the Government Code for the payment of the then  
11 maturing principal of, and interest on, the bonds in each fiscal  
12 year, there shall be returned to the General Fund all of the money  
13 in the fund, not in excess of the principal of, and interest on, any  
14 bonds then due and payable. If the money so returned on the  
15 remittance dates is less than the principal and interest then due and  
16 payable, the balance remaining unpaid shall be returned to the  
17 General Fund out of the fund as soon as it shall become available,  
18 together with interest thereon from the dates of maturity until  
19 returned, at the same rate of interest as borne by the bonds,  
20 compounded semiannually. This subdivision does not grant any  
21 lien on the fund or the moneys therein to holders of any bonds  
22 issued under this article. However, this subdivision shall not apply  
23 in the case of any debt service that is payable from the proceeds  
24 of any refunding bonds. For purposes of this subdivision, “debt  
25 service” means the principal (whether due at maturity, by  
26 redemption, or acceleration), premium, if any, or interest payable  
27 on any date to any series of bonds.

28 SEC. 56. Section 19237 of the Elections Code is amended and  
29 renumbered to read:

30 19258. Notwithstanding Section 13340 of the Government  
31 Code, there is hereby continuously appropriated from the General  
32 Fund, for purposes of this article, a sum of money that will equal  
33 both of the following:

34 (a) That sum annually necessary to pay the principal of, and the  
35 interest on, the bonds issued and sold as provided herein, as that  
36 principal and interest become due and payable.

37 (b) That sum necessary to carry out Section 19259, appropriated  
38 without regard to fiscal years.

39 SEC. 57. Section 19238 of the Elections Code is amended and  
40 renumbered to read:

1 19259. For purposes of this article, the Director of Finance  
2 may, by executive order, authorize the withdrawal from the General  
3 Fund of a sum of money not to exceed the amount of the unsold  
4 bonds that have been authorized by the committee to be sold  
5 pursuant to this article. Any sums withdrawn shall be deposited  
6 in the fund. All moneys made available under this section to the  
7 board shall be returned by the board to the General Fund, plus the  
8 interest that the amounts would have earned in the Pooled Money  
9 Investment Account, from the sale of bonds for the purpose of  
10 carrying out this article.

11 SEC. 58. Section 19239 of the Elections Code is amended and  
12 renumbered to read:

13 19260. The board may request the Pooled Money Investment  
14 Board to make a loan from the Pooled Money Investment Account,  
15 in accordance with Section 16312 of the Government Code, for  
16 the purpose of carrying out this article. The amount of the request  
17 shall not exceed the amount of unsold bonds which the committee  
18 has, by resolution, authorized to be sold for the purpose of carrying  
19 out this article. The board shall execute whatever documents are  
20 required by the Pooled Money Investment Board to obtain and  
21 repay the loan. Any amounts loaned shall be deposited in the fund  
22 to be allocated by the board in accordance with this article.

23 SEC. 59. Section 19240 of the Elections Code is amended and  
24 renumbered to read:

25 19261. Upon request of the board, supported by a statement  
26 of its plans and projects approved by the Governor, the committee  
27 shall determine whether to issue any bonds authorized under this  
28 article in order to carry out the board's plans and projects and, if  
29 so, the amount of bonds to be issued and sold. Successive issues  
30 of bonds may be authorized and sold to carry out these plans and  
31 projects progressively, and it is not necessary that all of the bonds  
32 be issued or sold at any one time.

33 SEC. 60. Section 19241 of the Elections Code is amended and  
34 renumbered to read:

35 19262. (a) The committee may authorize the Treasurer to sell  
36 all or any part of the bonds authorized by this article at the time  
37 or times established by the Treasurer.

38 (b) Whenever the committee deems it necessary for an effective  
39 sale of the bonds, the committee may authorize the Treasurer to  
40 sell any issue of bonds at less than their par value, notwithstanding

1 Section 16754 of the Government Code. However, the discount  
2 on the bonds shall not exceed 3 percent of the par value thereof.

3 SEC. 61. Section 19242 of the Elections Code is amended and  
4 renumbered to read:

5 19263. Out of the first money realized from the sale of bonds  
6 as provided by this article, there shall be redeposited in the General  
7 Obligation Bond Expense Revolving Fund, established by Section  
8 16724.5 of the Government Code, the amount of all expenditures  
9 made for purposes specified in that section, and this money may  
10 be used for the same purpose and repaid in the same manner  
11 whenever additional bond sales are made.

12 SEC. 62. Section 19243 of the Elections Code is amended and  
13 renumbered to read:

14 19264. Any bonds issued and sold pursuant to this article may  
15 be refunded in accordance with Article 6 (commencing with  
16 Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of  
17 the Government Code. The approval of the voters for the issuance  
18 of bonds under this article includes approval for the issuance of  
19 bonds issued to refund bonds originally issued or any previously  
20 issued refunding bonds.

21 SEC. 63. Section 19244 of the Elections Code is amended and  
22 renumbered to read:

23 19265. Notwithstanding any provision of the bond act, if the  
24 Treasurer sells bonds under this article for which bond counsel  
25 has issued an opinion to the effect that the interest on the bonds is  
26 excludable from gross income for purposes of federal income tax,  
27 subject to any conditions which may be designated, the Treasurer  
28 may establish separate accounts for the investment of bond  
29 proceeds and for the earnings on those proceeds, and may use those  
30 proceeds or earnings to pay any rebate, penalty, or other payment  
31 required by federal law or take any other action with respect to the  
32 investment and use of bond proceeds required or permitted under  
33 federal law necessary to maintain the tax-exempt status of the  
34 bonds or to obtain any other advantage under federal law on behalf  
35 of the funds of this state.

36 SEC. 64. Section 19245 of the Elections Code is amended and  
37 renumbered to read:

38 19266. The Legislature hereby finds and declares that,  
39 inasmuch as the proceeds from the sale of bonds authorized by  
40 this article are not “proceeds of taxes” as that term is used in Article

1 XIII B of the California Constitution, the disbursement of these  
2 proceeds is not subject to the limitations imposed by Article XIII B.

3 SEC. 65. The heading of Article 4 (commencing with Section  
4 19250) of Chapter 3 of Division 19 of the Elections Code is  
5 amended and renumbered to read:

6  
7 Article 6. Direct Recording Electronic Voting Systems  
8

9 SEC. 66. Section 19250 of the Elections Code is amended and  
10 renumbered to read:

11 19270. (a) The Secretary of State shall not *certify or*  
12 *conditionally* approve a direct recording electronic voting system  
13 unless the system ~~does all of the following:~~ *includes an accessible*  
14 *voter verified paper audit trail.*

15 ~~-(a) Includes an accessible voter verified paper audit trail.~~

16 (b) *On and after January 1, 2006, a city or county shall not*  
17 *contract for or purchase a direct recording electronic voting system*  
18 *unless the system has been certified or conditionally approved for*  
19 *use by the Secretary of State.*

20 ~~-(b) Includes~~

21 (c) *As of January 1, 2006, all direct recording electronic voting*  
22 *systems in use on that date, regardless of the date it was contracted*  
23 *for or purchased, shall have received federal qualification and*  
24 *include an accessible voter verified paper audit trail. If the direct*  
25 *recording electronic voting system does not include an accessible*  
26 *voter verified paper audit trail, the system shall be replaced or*  
27 *modified to include an accessible voter verified paper audit trail.*

28 (d) *All direct recording electronic voting systems shall include*  
29 *a method by which a voter may electronically verify, through a*  
30 *nonvisual method, the information that is contained on the paper*  
31 *record copy of that voter's ballot.*

32 ~~-(e) Allows for a~~

33 (e) *A paper record copy that shall be is printed by a voter*  
34 *verified paper audit trail component shall be printed in the same*  
35 *language that the voter used when casting his or her ballot on the*  
36 *direct recording electronic voting system. For languages that lack*  
37 *a written form, the paper record copy shall be printed in English.*

38 SEC. 67. Section 19251 of the Elections Code is amended and  
39 renumbered to read:

40 19271. As used in this article:

1 (a) “Accessible” means that the information provided on the  
2 paper record copy from the voter verified paper audit trail  
3 mechanism is provided or conveyed to voters via both a visual and  
4 a nonvisual method, such as through an audio component.

5 (b) “Direct recording electronic voting system” means a voting  
6 system that records a vote electronically and does not require or  
7 permit the voter to record his or her vote directly onto a tangible  
8 ballot.

9 (c) “Voter verified paper audit trail” means a component of a  
10 direct recording electronic voting system that prints a  
11 contemporaneous paper record copy of each electronic ballot and  
12 allows each voter to confirm his or her selections before the voter  
13 casts his or her ballot.

14 (d) “Federal qualification” means the system has been certified,  
15 if applicable, by means of qualification testing by a nationally  
16 recognized test laboratory and has met or exceeded the minimum  
17 requirements set forth in the Performance and Text Standards for  
18 Punch Card, Mark Sense, and Direct Recording Electronic Voting  
19 Systems, or in any successor voluntary standard document,  
20 developed and promulgated by the Federal Election Commission,  
21 the Election Assistance Commission, or the National Institute of  
22 Standards and Technology.

23 (e) “Paper record copy” means an auditable document printed  
24 by a voter verified paper audit trail component that corresponds  
25 to the voter’s electronic vote and lists the contests on the ballot  
26 and the voter’s selections for those contests. A paper record copy  
27 is not a ballot.

28 (f) “Parallel monitoring” means the testing of a randomly  
29 selected sampling of voting equipment on election day designed  
30 to simulate actual election conditions to confirm that the system  
31 is registering votes accurately.

32 SEC. 68. Section 19252 of the Elections Code is amended and  
33 renumbered to read:

34 19272. To the extent that they are available for expenditure  
35 for the purposes of this article, federal funds or moneys from the  
36 Voting Modernization Fund, created pursuant to subdivision (b)  
37 of Section ~~19234~~, 19254, shall be used. No moneys from the  
38 General Fund shall be expended for the purposes of this article.

39 SEC. 69. Section 19253 of the Elections Code is amended and  
40 renumbered to read:

1 19273. (a) On a direct recording electronic voting system, the  
2 electronic record of each vote shall be considered the official record  
3 of the vote, except as provided in subdivision (b).

4 (b) (1) The voter verified paper audit trail shall be considered  
5 the official paper audit record and shall be used for the required  
6 1-percent manual tally described in Section 15360 and any full  
7 recount or post-election audit.

8 (2) The voter verified paper audit trail shall govern if there is  
9 any difference between it and the electronic record during a  
10 1-percent manual tally, full recount, or post-election audit.

11 SEC. 70. Section 19254 of the Elections Code is amended and  
12 renumbered to read:

13 19274. The Secretary of State shall not certify *or conditionally*  
14 *approve* a direct recording electronic voting system unless the  
15 paper used for its voter verified paper audit trail is of sufficient  
16 quality that it maintains its integrity and readability throughout  
17 the retention period specified in Chapter 4 (commencing with  
18 Section 17300) of Division 17.

19 SEC. 71. Section 19255 of the Elections Code is amended and  
20 renumbered to read:

21 19275. (a) For each statewide election, the Secretary of State  
22 shall conduct parallel monitoring of each direct recording electronic  
23 voting system on which ballots will be cast. This section shall only  
24 apply to precincts that have more than one direct recording  
25 electronic voting system.

26 (b) The results of the parallel monitoring shall be made available  
27 prior to the certification of the election.

28 SEC. 72. The heading of Chapter 3.5 (commencing with  
29 Section 19260) of Division 19 of the Elections Code is amended  
30 to read:

31  
32 CHAPTER 3.5. CERTIFICATION OF BALLOT MARKING SYSTEMS  
33

34 SEC. 73. Section 19260 of the Elections Code is amended and  
35 renumbered to read:

36 19280. The Secretary of State shall not certify or conditionally  
37 approve a ballot marking system, or part of a ballot marking  
38 system, unless it fulfills the requirements of this code and the  
39 regulations of the Secretary of State.

1 SEC. 74. Section 19261 of the Elections Code is amended and  
2 renumbered to read:

3 19281. (a) A ballot marking system, in whole or in part, shall  
4 not be used unless it has been certified or conditionally approved  
5 by the Secretary of State prior to the election at which it is to be  
6 first used.

7 (b) *All other uses of a ballot marking system shall be subject to*  
8 *the provisions of Section 19202.*

9 SEC. 75. Section 19262 of the Elections Code is amended and  
10 renumbered to read:

11 19284. (a) A person, corporation, or public agency owning or  
12 having an interest in the sale or acquisition of a ballot marking  
13 system or a part of a ballot marking system may apply to the  
14 Secretary of State for certification *or conditional approval* that  
15 includes testing and examination of the applicant's system and a  
16 report on the findings, which shall include the accuracy and  
17 efficiency of the ballot marking system. As part of its application,  
18 the applicant of a ballot marking system or a part of a ballot  
19 marking system shall notify the Secretary of State in writing of  
20 any known defect, fault, or failure of the version of the hardware,  
21 software, or firmware of the ballot marking system or a part of the  
22 ballot marking system submitted. The Secretary of State shall not  
23 begin his or her certification process until he or she receives a  
24 completed application from the applicant of the ballot marking  
25 system or a part of the ballot marking system. The applicant shall  
26 also notify the Secretary of State in writing of any defect, fault, or  
27 failure of the version of the hardware, software, or firmware of  
28 the ballot marking system or a part of the ballot marking system  
29 submitted that is discovered after the application is submitted and  
30 before the Secretary of State submits the report required by Section  
31 19288. The Secretary of State shall complete his or her examination  
32 without undue delay.

33 (b) After receiving an applicant's written notification of a defect,  
34 fault, or failure, the Secretary of State shall notify the United States  
35 Election Assistance Commission or its successor entity of the  
36 problem as soon as practicable so as to present a reasonably  
37 complete description of the problem. The Secretary of State shall  
38 subsequently submit a report regarding the problem to the United  
39 States Election Assistance Commission or its successor entity. The

1 report shall include any report regarding the problem submitted  
2 to the Secretary of State by the applicant.

3 (c) As used in this chapter:

4 (1) “Defect” means any flaw in the hardware or documentation  
5 of a certified or conditionally approved ballot marking system that  
6 could result in a state of unfitness for use or nonconformance to  
7 the manufacturer’s specifications or applicable law.

8 (2) “Failure” means a discrepancy between the external results  
9 of the operation of any software or firmware in a certified or  
10 conditionally approved ballot marking system and the  
11 manufacturer’s product requirements for that software or firmware  
12 or applicable law.

13 (3) “Fault” means a step, process, or data definition in any  
14 software or firmware in a certified or conditionally approved ballot  
15 marking system that is incorrect under the manufacturer’s program  
16 specification or applicable law.

17 SEC. 76. Section 19263 of the Elections Code is amended and  
18 renumbered to read:

19 19285. The Secretary of State shall use a state-approved testing  
20 agency *or expert technicians* to examine ballot marking systems  
21 proposed for use or sale in this state. He or she shall furnish a  
22 complete report of the findings of the examination and testing to  
23 the Governor and the Attorney General.

24 SEC. 77. Section 19264 of the Elections Code is amended and  
25 renumbered to read:

26 19287. (a) Prior to publishing his or her decision to certify,  
27 conditionally approve, or withhold certification of a ballot marking  
28 system, the Secretary of State shall provide for a 30-day public  
29 review period and conduct a public hearing to give interested  
30 persons an opportunity to review testing and examination reports  
31 and express their views for or against certification or conditional  
32 approval of the ballot marking system.

33 (b) The Secretary of State shall give notice of the public review  
34 period and hearing in the manner prescribed in Section 6064 of  
35 the Government Code in a newspaper of general circulation  
36 published in Sacramento County. The Secretary of State shall also  
37 provide notice of the ~~public review period and hearing~~ on his or  
38 her Internet Web site. The Secretary of State shall transmit written  
39 notice of the ~~public review period and hearing~~, at least 30 days  
40 prior to the public review period and hearing, to each county



1 elections official, to any person that the Secretary of State believes  
2 will be interested in the public review period and hearing, and to  
3 any person who requests, in writing, notice of the public review  
4 period and hearing.

5 (c) The decision of the Secretary of State to certify, conditionally  
6 approve, or withhold ~~approval~~ *certification* of a ballot marking  
7 system shall be in writing and shall state the findings of the  
8 Secretary of State. The decision shall be open to public inspection.

9 SEC. 78. Section 19265 of the Elections Code is repealed.

10 SEC. 79. Section 19266 of the Elections Code is repealed.

11 SEC. 80. Section 19267 of the Elections Code is amended and  
12 renumbered to read:

13 19288. Within 60 days after the completion of the examination  
14 of a ballot marking system, the Secretary of State shall make  
15 publicly available a report stating whether the ballot marking  
16 system has been certified or conditionally approved, or whether  
17 certification has been withheld.

18 SEC. 81. Section 19268 of the Elections Code is repealed.

19 SEC. 82. Section 19269 of the Elections Code is amended and  
20 renumbered to read:

21 19289. Within 10 days after issuing and filing a certification  
22 decision and associated testing reports, the Secretary of State shall  
23 ~~send a copy to the board of supervisors of each county make~~  
24 *available to the public a full and complete copy of the certification*  
25 *report and all associated documentation, except that portions of*  
26 *the report or documentation that contain information that the*  
27 *Secretary of State determines to be confidential or proprietary*  
28 *shall not be made publicly available. The Secretary of State shall*  
29 *notify the board of supervisors and elections official of each county*  
30 *of the availability of the report and associated documentation.*

31 SEC. 83. Section 19270 of the Elections Code is amended and  
32 renumbered to read:

33 19290. (a) If a ballot marking system has been certified or  
34 conditionally approved by the Secretary of State, the vendor or  
35 proprietor county, in cases where the system is publicly owned,  
36 shall notify the Secretary of State and all local elections officials  
37 who use the system in writing of any defect, fault, or failure of the  
38 hardware, software, or firmware of the system or a part of the  
39 system within 30 calendar days after the vendor learns of the defect,  
40 fault, or failure.

(b) After receiving written notification of a defect, fault, or failure pursuant to subdivision (a), the Secretary of State shall notify the United States Election Assistance Commission or its successor entity of the problem as soon as practicable so as to present a reasonably complete description of the problem. The Secretary of State shall subsequently submit a report regarding the problem to the United States Election Assistance Commission or its successor entity. The report shall include any report regarding the problem submitted to the Secretary of State.

SEC. 84. Section 19271 of the Elections Code is amended and renumbered to read:

19291. If a ballot marking system has been certified or conditionally approved by the Secretary of State, it shall not be changed or modified until the Secretary of State has been notified in writing and has determined that the change or modification does not impair its accuracy and efficiency sufficient to require a reexamination and recertification or reapproval pursuant to this chapter. The Secretary of State may adopt rules and regulations governing the procedures to be followed in making his or her determination as to whether the change or modification impairs accuracy or efficiency.

SEC. 85. Section 19272 of the Elections Code is amended and renumbered to read:

19292. The Secretary of State may seek injunctive and administrative relief if a ballot marking system has been compromised by the addition or deletion of hardware, software, or firmware without prior approval or is defective due to a known hardware, software, or firmware defect, fault, or failure that has not been disclosed pursuant to Section 19284 or 19290.

SEC. 86. Section 19273 of the Elections Code is amended and renumbered to read:

19293. (a) The Secretary of State may seek all of the following relief for an unauthorized change in hardware, software, or firmware in a ballot marking system certified or conditionally approved in California:

(1) A civil penalty from the offending party or parties, not to exceed ten thousand dollars (\$10,000) per violation. For purposes of this subdivision, each ballot marking system component found to contain the unauthorized hardware, software, or firmware shall be considered a separate violation. A penalty imposed pursuant to

1 this subdivision shall be apportioned 50 percent to the county in  
2 which the violation occurred, if applicable, and 50 percent to the  
3 office of the Secretary of State for purposes of bolstering ballot  
4 marking system security efforts.

5 (2) Immediate commencement of proceedings to withdraw  
6 certification or conditional approval for the ballot marking system  
7 in question.

8 (3) Prohibiting the manufacturer or vendor of a ballot marking  
9 system from doing elections-related business in the state for one,  
10 two, or three years.

11 (4) Refund of all moneys paid by a local agency for a ballot  
12 marking system or a part of a ballot marking system that is  
13 compromised by an unauthorized change or modification, whether  
14 or not the ballot marking system has been used in an election.

15 (5) Any other remedial actions authorized by law to prevent  
16 unjust enrichment of the offending party.

17 (b) (1) The Secretary of State may seek all of the following  
18 relief for a known but undisclosed defect, fault, or failure in a  
19 ballot marking system or part of a ballot marking system certified  
20 or conditionally approved in California:

21 (A) Refund of all moneys paid by a local agency for a ballot  
22 marking system or part of a ballot marking system that is defective  
23 due to a known but undisclosed defect, fault, or failure, whether  
24 or not the ballot marking system has been used in an election.

25 (B) A civil penalty from the offending party or parties, not to  
26 exceed fifty thousand dollars (\$50,000) per violation. For purposes  
27 of this subdivision, each defect, fault, or failure shall be considered  
28 a separate violation. A defect, fault, or failure constitutes a single  
29 violation regardless of the number of ballot marking system units  
30 in which the defect, fault, or failure is found.

31 (C) In addition to any other penalties or remedies established  
32 by this section, the offending party or parties shall be liable in the  
33 amount of one thousand dollars (\$1,000) per day after the  
34 applicable deadline established in Section 19290 until the required  
35 disclosure is filed with the Secretary of State.

36 (2) A penalty imposed pursuant to subparagraph (B) or (C) of  
37 paragraph (1) shall be deposited in the General Fund.

38 (c) Before seeking any measure of relief under this section, the  
39 Secretary of State shall hold a public hearing. The Secretary of  
40 State shall give notice of the hearing in the manner prescribed by

1 Section 6064 of the Government Code in a newspaper of general  
2 circulation published in Sacramento County. The Secretary of  
3 State also shall transmit written notice of the hearing, at least 30  
4 days prior to the hearing, to each county elections official, the  
5 offending party or parties, any persons that the Secretary of State  
6 believes will be interested in the hearing, and any persons who  
7 request, in writing, notice of the hearing.

8 (d) The decision of the Secretary of State to seek relief under  
9 this section shall be in writing and state his or her findings. The  
10 decision shall be open to public inspection.

11 SEC. 87. Section 19274 of the Elections Code is amended and  
12 renumbered to read:

13 19294. (a) The Secretary of State may seek injunctive relief  
14 requiring an elections official, or any vendor or manufacturer of  
15 a ballot marking system, to comply with the requirements of this  
16 code, the regulations of the Secretary of State, and the  
17 specifications for the ballot marking system and its software,  
18 including the programs and procedures for vote marking and  
19 testing.

20 (b) Venue for a proceeding under this section shall be  
21 exclusively in Sacramento County.

22 SEC. 88. Section 19275 of the Elections Code is amended and  
23 renumbered to read:

24 19295. A ballot marking system or part of a ballot marking  
25 system shall not do any of the following:

26 (a) Have the capability, including an optional capability, to use  
27 a remote server to mark a voter's selections transmitted to the  
28 server from the voter's computer via the Internet.

29 (b) Have the capability, including an optional capability, to store  
30 any voter identifiable selections on any remote server.

31 (c) Have the capability, including the optional capability, to  
32 tabulate votes.

33 SEC. 89. Section 19282 is added to the Elections Code, to read:

34 19282. The Secretary of State shall not certify or conditionally  
35 approve any ballot marking system that includes features that  
36 permit a voter to produce, *and leave the polling place with*, a copy  
37 or facsimile of the ballot cast by the voter at that polling place.

38 SEC. 90. Section 19283 is added to the Elections Code, to read:

39 19283. (a) The Secretary of State shall adopt and publish  
40 standards and regulations governing the use of ballot marking

1 systems. The Secretary of State may also adopt, *in whole or in*  
2 *part*, voluntary federal voting system standards established by the  
3 United States Election Assistance Commission or its successor  
4 agency.

5 (b) *Ballot marking system standards adopted by the Secretary*  
6 *of State pursuant to subdivision (a) shall include, but not be limited*  
7 *to, all of the following requirements:*

8 (1) *The machine or device and its software shall be suitable for*  
9 *the purpose for which it is intended.*

10 (2) *The ballot marking system shall preserve the secrecy of the*  
11 *ballot.*

12 (3) *The ballot marking system shall be safe from fraud or*  
13 *manipulation.*

14 (4) *The ballot marking system shall be accessible to voters with*  
15 *disabilities and to voters who require assistance in a language*  
16 *other than English if the language is one in which a ballot or ballot*  
17 *materials are required to be made available to voters.*

18 SEC. 91. Section 19286 is added to the Elections Code, to read:

19 19286. The person, corporation, or public agency applying for  
20 certification of a ballot marking system is responsible for all costs  
21 associated with the testing and examination of the ballot marking  
22 system.